

If the Examiner intended to rely on provisional application 60/114,039 filed on December 29, 1998, Applicant respectfully submits that it cannot be presumed that the December 29, 1998 provisional application has all or even any of the description provided in Havemann et al. and relied upon by the Office Action for the rejection. If the Examiner believes that provisional application 60/114,039 filed December 29, 1998 supports the rejection, Applicant respectfully requests that the Examiner reject the claims based on such reference.

Response to Office Action mailed August 14, 2003 at page 18-19.

In the "Response to Arguments" section, the current Office Action indicated that "the subject matter relied upon in Havemann is supported by the provisional application (60/114,039)." Office Action at page 9. Applicant respectfully requests evidence of such support. In particular, Applicant will not assume that this provisional application includes the relied upon subject matter. Rather, **Applicant requests that a copy of the provisional application (60/114,039) along with the sections therein that include the relied upon subject matter.** See MPEP 707.05(a), which states that copies of cited references are automatically furnished to Applicant together with the Office Action.

Applicant reserves the right to answer the specific rejections based on the actual provisional reference rather than hypothetical assertions based on an issued patent which has a date too late to be used as a reference. Further, Applicant reserves the right, as provided for under 37 C.F.R. 1.131, to swear behind provisional application 60/114,039 filed on December 29, 1998. With regard to the other cited references, Applicant does not admit that such references are prior art and reserves the right to "swear behind" each of these references as provided under 37 C.F.R. 1.131.

**Therefore, until a copy of this provisional application is provided, Havemann cannot be relied upon.** Because Havemann cannot be relied upon, the references when combined do not teach or suggest all the claim limitations. Therefore, the Office Action fails to state a prima facie case of obviousness with respect to claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189. Therefore, Applicant requests withdrawal of the rejections and reconsideration and allowance of claims 1-17, 19-25, 27-32, 34-36, 38-44, 50-77, and 185-189.

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Moreover, based on the fact that Applicant did not receive a copy of the provisional application and hence does not have all information from the USPTO necessary to respond, Applicant requests that the “finality” status of the present Office Action be withdrawn.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 371-2103 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By \_\_\_\_\_

~~Gregg A Peacock~~  
Reg. No. 45,001

Date 7-12-04

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12 day of July, 2004.

Name

Tina Kohout

Signature

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